

FILED
BOARD OF PHYSICAL THERAPY

DEC 15 2009

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF PHYSICAL THERAPY EXAMINERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

ROY CAPELLARO, P. T.
License No. 40QA00457100

TO PRACTICE PHYSICAL THERAPY IN
THE STATE OF NEW JERSEY

Administrative Action

MODIFIED
CONSENT ORDER

This matter was opened to the New Jersey State Board of Physical Therapy Examiners (hereinafter "the Board") upon receipt of information submitted by C.P. a former patient alleging that Mr. Capellaro, P.T. engaged in a personal and sexual relationship with her during the course of her physical therapy treatment to her shoulder and hip from May 2007 to July 2008. C.P. also complained about the respondent's billing practices alleging that he failed to submit bills to her insurance carrier in order for

her to be reimbursed and that he failed to obtain pre-certifications from her automobile insurance carrier for treatment resulting from a number of car accidents. C.P. alleged this initially resulted in a denial of payment and ultimately in delayed insurance reimbursement to her.

C.P. is a Yoga instructor and had rented space in Respondent's office for her classes during the time she was receiving treatment and received training as a craniosacral therapist. C.P. acknowledged that she had a mentoring relationship with the Respondent whereby he was "helping her learn" the craniosacral techniques by demonstrating techniques on her yoga clients with the client's permission. C.P. alleged that the craniosacral therapy resulted in Respondent placing his hands in sexually suggestive positions and that Respondent did not always appropriately explain to the patients what the procedure was and how and where the manual technique was to be performed, although it involved touching near intimate areas of the patient's body.

Respondent represented by David Barmack, Esquire appeared at an investigative inquiry held on July 14, 2009. The Respondent acknowledged that his practice involves primarily manual therapy including craniosacral therapy and the manual therapy often involves palpation or touching near intimate areas of the patient's body including the breasts and pelvic regions.

Respondent confirmed that he treated C. P. for her shoulder from May 9, 2007 through June 17, 2008. Respondent also admitted that he had a personal relationship with C.P. during the course of her physical therapy treatment and that he was intimate with her during this time. Sometime in December of 2007 he allowed his

patient C.P. to reside in a spare room in his home with him in upstate New York for several months. C.P. moved out but continued to receive physical therapy treatment from the Respondent. The last session he had with C.P. was in June of 2008. A review of the patient record for C.P. does not reflect that he prepared a discharge summary on May 17, 2008 as required by N.J.A.C. 13: 39A-3.1(c) 13 and Respondent further testified that he does not generally prepare a discharge summary upon the patient's completion of therapy treatment.

Respondent's patient records do not include evaluations, re-evaluations and recording of measurements, nor indicate prognosis or the progress on the shoulder in any fashion as required by N.J.A.C. 13: 39A-3.1(c)2. Respondent claimed that it was difficult to document the progress of the shoulder because "besides working on range of motion and the intrinsic mobility of the capsule and the rotators, I spend a fair amount of energy trying to get the movement better." Respondent does not often use a pain scale but relies upon the response of the patient as to how they are feeling. Respondent does not always document the progress of the patient in the patient record nor did Respondent document communication with other health care professionals as required by N.J.A.C. 13:39A-3.1(c)9 and 12. The patient records of C.P. contained the respondent's initial of his first name and his last name with part of his license number on one page and the remaining pages have only initials despite the requirements of N.J.A.C. 13:39A-3.1(b)1. It was noted that the dates of entry of treatment and the billing dates for C.P. did not correspond which conflicts with N.J.A.C. 13:39A-3.1(a) requiring that patient records accurately reflect the patient contact with the physical therapist. Respondent testified that he did not have any checks and

balances in place in his practice to make sure that his treatment notes correspond with the billing notes.

Respondent does not have a formal policy on re-evaluations but that he "tends to spend one day every month or two and just look at things more thoroughly." His documentation for a re-evaluation would include a longer note for that record. C.P.'s record did not reflect any re-evaluations were performed. Respondent claims that he calls physicians who have referred patients to him and will sometimes record that in the patient record. C.P.'s patient record did not reflect any notations regarding Respondent's conversation with the referring physician as required by N.J.A.C. 13:39A-3.1(c)12.

Having reviewed the entire record, including the testimony and written response of the respondent and the patient records of C.P. and R.F., it appears to the Board that respondent has violated the sexual misconduct regulation of the Board as he "engaged in sexual contact with a patient with whom he has a patient therapist relationship" pursuant to N.J.A.C. 13:39A-3.10(c). This conduct is deemed to constitute professional misconduct pursuant to N.J.A.C. 13:39A-3.10 and N.J.S.A. 45:1-21(e). A review of the patient records of C.P. and R. F. demonstrated that respondent violated the patient record regulations at N.J.A.C. 13:39A-3.1(a) and (c) 1, 2, 4 through 13 by failing to include in the patient record all of the minimum requirements set forth in the regulation. These facts establish a basis for disciplinary action pursuant to N.J.S.A. 45:1-21(e) and (h).

The respondent being desirous of resolving this matter without resort to formal proceedings, and the Board having determined that the following provisions are sufficiently protective of the public interest and welfare, and for good cause shown,

IT IS ON THIS 15th DAY OF December 2009

HEREBY ORDERED AND AGREED THAT:

1. Respondent's license to practice physical therapy shall be suspended for two years, the first three months of which shall be an active suspension. The remainder of the suspension shall be stayed and served as a period of probation on the condition that Respondent enroll in and successfully complete and submit proof of satisfactory completion of the Probe PT ethics course offered in April 2010 and that he shall obtain a supervisor and a chaperone both pre-approved by the Board for his practice for the remaining year and a nine months of stayed suspension.

The Respondent shall refrain from practicing physical therapy in home care during the entire period of probation. The period of active suspension begins thirty (30) days from the date that the consent order is filed with the Board.

2. Prior to reinstatement of the license, Respondent shall appear before the Board to demonstrate he has enrolled in the specified ethics course, that he has submitted and obtained an approval of a supervisor and a chaperone of his practice.

has a plan for implementing appropriate record keeping, a plan for utilization of the chaperone, and is fit and competent to resume the practice of physical therapy. Practice on probation shall not begin until Respondent receives approval of the Board which shall not be unreasonably withheld.

3. The supervisor shall be a licensed physical therapist in New Jersey and shall be pre-approved by the Board prior to his being engaged by the respondent and prior to respondent's returning to active practice. The Board accepts Barry Inglett, P.T. to serve as Mr. Capellaro's Board approved supervisor. The supervisor shall have knowledge of the Respondent's record keeping violations and boundary violations. The supervisor shall meet face to face with Mr. Capellaro at least once a week to discuss his progress, the implementation of his patient record plan and patient interactions. The supervisor shall review patient records including billing records and any other documents necessary for appropriate supervision. The supervisor shall confirm in writing that he/she has seen this consent order and agrees to supervise Mr. Capellaro. The supervisor shall report in writing to the Board on a monthly basis regarding the respondent's progress for the first six months. After the completion of six months the Board will make a determination in writing based on the previous reports received to determine whether to extend the time period of reporting by the supervisor. The supervisor's report shall provide an informative evaluation of the keeping respondent's patient treatment records including billing and the measures implemented in respondent's practice to comply with the regulations regarding patient records and professional practice. The supervisor shall pay particular attention to Respondent's dealing with boundary issues and sexual relationships as well as Respondent's overall

practice regarding the preparation of patient and billing records. The cost of supervision is the responsibility of the Respondent. The supervisor shall agree to immediately notify the Board in writing of any violations of the Physical Therapist Licensing Act, its regulations and of any conduct which fails to meet the acceptable standards of the professional practice.

4. Respondent shall have a chaperone in place for all treatment afforded to his patients whether male or female during the entire period of stayed suspension. The chaperone may be an employee of the Respondent or a family member or an acquaintance of the patient who is 18 years of age or older and must be in the treatment room from the beginning to the end of all patient contact with Respondent. The Respondent shall indicate in the patient record the name of the chaperone. If an employee of Respondent serves as chaperone, the chaperone shall initial each patient progress note to indicate his or her presence for the patient interaction. Respondent agrees to cease home care during the period of probation.

5. The requirements with regard to the chaperone and supervisor pursuant to this Order shall remain in effect during the period of stayed suspension prescribed by this Order and until further Order of the Board.

6. Respondent agrees to attend psychotherapy with a Board approved therapist for at least the period of probation. Respondent shall commence therapy within thirty days of the receipt of this Order. Upon receipt of the filed order, Respondent shall submit the name and curriculum vitae of a New Jersey licensed psychologist or psychiatrist in New Jersey who has experience in dealing with issues of sexual misconduct and professional boundary violations. The therapist shall be provided with

copies of this order. Respondent is responsible to provide that the therapist shall provide quarterly reports to the Board confirming the dates of therapy, a statement of whether the respondent is satisfactorily participating in therapy process and his progress in therapy. The Board shall be advised immediately of any changes in therapy. After the completion of a minimum of one year of therapy, the respondent may apply before the Board or committee of the Board for consideration of this issue. A written recommendation by the approved therapist shall be submitted for the Board's consideration.

7. At the end of the period of stayed suspension, the Respondent shall appear before the Board or a committee of the Board to assess whether any of the conditions imposed by this Order should be continued in whole or in part.

8. Any deviation from the terms of this Order without the prior written consent of the Board shall constitute a failure to comply with the terms of this Order. Upon receipt of any reliable information indicating Mr. Capallero has violated any term of this Order or engaged in any boundary violations, Mr. Capallero's license may be automatically suspended by the Board for the period of stayed suspension. Mr. Capallero, upon five days notice, may request a hearing to contest the entry of such an order. At any such hearing the sole issue shall be whether any of the information received regarding Mr. Capallero was materially false. In addition, the Board reserves the right to bring further disciplinary action.

STATE BOARD OF PHYSICAL THERAPY
EXAMINERS

Karen Wilk PT, DPT 400A005200100
Karen Wilk, P.T., DPT
Chair

I have read and understand the
within Consent Order and agree
to be bound by its terms. Consent
is hereby given to the Board to
enter this Order.

Roy Capellaro P.T.
Roy Capellaro, P.T.

DATED: 12/9/09

This Order is agreed to as to form
and entry.

David Barnak
David Barnak, Esquire

DATED: 12/10/09